Green v. *Weatherill* ([1929] 2 Ch. 221), Maugham J. quoted some observations by Wigram V.C., in *Henderson* v. *Henderson* (3 Hare 114): 'I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time'."

I am accordingly of opinion that the learned magistrate was right and the appeal ought to be dismissed.

During the hearing of this appeal, I thought it right and expedient, in the interests of both parties, to canvass the question whether paragraph (j) of section 12(1) could, in strictness, be applicable because it seemed to me that by a confusion of thought two different norms were being homogenised in an attempt to bring this case within the four walls of paragraph (j). Could simple ground rent be identified with rent charged for a building erected thereon by the tenant at his own expense, the latter being a sum compounded of ground rent and an appropriate return for moneys invested in the building? Counsel agreed to this point being set down for argument and were granted an adjournment till the following day for them to consider the point. It is entirely *res integra* and never been previously raised in any reported case. I am much indebted to counsel for their arguments and the assistance they had been able to afford me on the subject, but I have come to the conclusion after anxious deliberation, that on principle I am not at liberty to enlarge the statutory grounds contained in paragraph (a) to (n), of section 12(1); *a fortiori* because the last paragraph is meant to be a general residuary provision to be applied where none of the preceding grounds can be invoked by the landlord. In my view, paragraph (j) is intended by the Legislature to cover only "premises" which wholly belong to the landlord, that is to say, where both the building and the land on which it stands are the property of the landlord — and not where the "premises" comprise both land belonging to the landlord and a temporary building which is the property of the tenant.

The monthly rent of $6.50 payable to the plaintiff issues out of the land, whereas the rent collected by the defendant from his sub-tenants issues partly out of his own building and partly out of the plaintiff's property. On this point therefore, I hold that paragraph (j) could not have been invoked by the plaintiff for dispossession of the defendant.

The appeal therefore stands dismissed. The order for costs made by the learned magistrate is set aside, but the defendant-respondent will be entitled to the costs of this appeal.

Appeal dismissed.

Solicitors: *Skrine & Co.*; *M. J. Mathew.*

LOW TECK CHENG v. LEONG WAH; LIM KAY POH, 3rd Party

[F.C. (Thomson L.P., Tan Ah Tah F.J., & Chua J.) August 10, 1964]

[Singapore — Federal Court Civil Appeal No. 62 of 1963]

Landlord and Tenant — Claim for possession — Conflicting evidence — Trial judge holding plaintiff entitled to possession — Reconsideration of facts by Federal Court — Federal Court forming its own conclusions on evidence — Reversal of finding by trial judge.

L.K.P., the 3rd party in these proceedings, was the chief tenant of the whole of the ground floor of No. 114 East Coast Road, Singapore. In 1948 the plaintiff rented the premises from L.K.P. and carried on there a watch repairing and provision business under the name and style of Winsons. In 1950 the defendant rented from the plaintiff a portion (at the right front) of the premises at $65.00 per mensem inclusive of water and lighting and carried on there a business under the style of Eveready Flower Service. In 1951 the plaintiff, the defendant and one HKK entered into a partnership, the firm name of the partnership being Winsons & Co., dealing in shoes, textiles and general goods.

The plaintiff alleged that after his withdrawal from the partnership (3 months after Winsons & Co. commenced to carry on business) he continued to carry on his watch repairing business and that he never at any time gave the tenancy of the whole of the ground floor to Winsons & Co. He claimed that LKP was still his landlord of the whole of the premises while the defendant was his sub-tenant of a portion of the ground floor.

The defendant alleged that when the partnership was formed it took over the tenancy of the premises and paid rent direct to LKP and that Winsons and Eveready Flower Service ceased to carry on business. The defendant also alleged that about a month after the plaintiff's withdrawal from the partnership the plaintiff rented from Winsons & Co. a space in the left portion for $10 per mensem and another portion of the premises for a business known as Katong Flower Shop at $30 per mensem. The defendant maintains that in 1953 when HKK withdrew from the partnership, the defendant became sole proprietor of the partnership.

The trial judge in reviewing the evidence stated "It is indeed a difficult matter to decide on which side of this comparatively evenly balanced line the case falls. After giving the matter the best consideration I can on the materials before me I have not without some hesitation, come to the conclusion that the version of the matter given by the plaintiff and the 3rd party Lim Kay Poh (the chief tenant) is to be accepted in preference to that of the defendant and his witnesses", and ordered that the defendant should give to the plaintiff possession of those portions of the ground floor of the premises in question which were occupied by the defendant. On appeal,

Held: (1) in the circumstances of this particular case having regard to the language used by the trial judge an appellate court was entitled to form its own conclusions as to the facts of the case;

(2) having regard to the documents signed by the plaintiff when he withdrew from the partnership and the working books of account of the firm of Winsons & Co. (in which the payments of $10 were recorded although the plaintiff alleged he was paying $50 per mensem which was later increased to $58.50) the learned trial judge should have given judgment for the defendant.

FEDERAL COURT.

D. G. Ironside (*R. E. Redrup* with him) for the appellant.

L. A. J. Smith for the respondents.

Cur. Adv. Vult.

Tan Ah Tah F.J.: This is an appeal by the defendant against a judgment of the High Court in Singapore whereby it was ordered, *inter alia*, that the defendant should give to the plaintiff possession of those portions of the ground floor of the premises known as No. 114 East Coast Road, Singapore which were occupied by the defendant.

The following facts are not in dispute. Lim Kay Poh, the third party in these proceedings was at all material times the chief tenant of the whole of the ground floor of No. 114 East Coast Road. In 1948 the plaintiff rented the whole of the ground floor of the premises from the third party and carried on there a watch repairing and provision business under the style or name of Winsons. In 1950 the defendant rented from the plaintiff that portion of the premises at the right front of the ground floor of No. 114 East Coast Road at $65 per mensem inclusive of water and lighting and carried on there a business under the style of Eveready Flower Service. In 1951 the plaintiff and the defendant entered into a partnership with one Ho Koon Kai, the style or firm name of the partnership being Winsons & Company, and its business being to sell shoes, textiles and general goods.

The case put forward by the plaintiff was that three businesses were being carried on in the premises, namely his own business known as Winsons, the Eveready Flower Service and the newly formed partnership of Winsons & Company. According to the plaintiff he let only a portion of the premises at the rear to Winsons & Company. It is not in dispute that three months after Winsons & Company commenced to carry on business the plaintiff withdrew from the partnership. The plaintiff's contention is that after he had ceased to be a partner in Winsons & Company he continued to carry on his watch repairing business and that he never at any time gave the tenancy of the whole of the ground floor to Winsons & Company. He claims that Lim Kay Poh was and still is his landlord of the whole of the ground floor while the defendant is his subtenant of a portion of the ground floor.

The defendant's case may be summarised as follows. When the partnership of Winsons & Company was formed it took over the tenancy of the whole of the ground floor of the premises and paid the rent direct to Lim Kay Poh. The business concerns known as Winsons and Eveready Flower Service ceased to carry on business. About a month after his withdrawal from the partnership the plaintiff rented from Winsons & Company a space in the left half portion of the premises at a rental of $10 per mensem. At about the same time the defendant also rented from Winsons & Company a portion of the premises for a business known as the Katong Flower Shop at a rental of $30 per mensem. In 1953 Ho Koon Kai withdrew from the partnership and the defendant became the sole proprietor of Winsons & Company. In the same year, with the defendant's consent, the plaintiff paid to Lim Kay Poh direct the rental of $10 per mensem in respect of the portion of the premises which the plaintiff was occupying.

In dealing with these allegations and counter-allegations the learned trial judge expressed himself as follows:—

> "The short issue, on which there is a sharp conflict of evidence, is whether the plaintiff trading as Winsons transferred the tenancy of the whole of the ground floor of 114 East Coast Road to the partnership of Winsons and Company which ultimately vested in the defendant. I have experienced considerable difficulty in arriving at a decision in this case. The probabilities of the matter in some instances support the plaintiff's case and in others that of the defendant. Similarly with regard to the documents and the inferences to be drawn from them. Some are consistent with and confirm the plaintiff's case and others the defendants. Furthermore the absence of any rent receipts, has further complicated the issue. It is indeed a difficult matter to decide on which side of this comparatively evenly balanced line the case falls. After giving the matter the best consideration I can on the materials before me I have not without some hesitation, come to the conclusion that the version of the matter given by the plaintiff and the 3rd party Lim Kay Poh (the chief tenant) is to be accepted in preference to that of the defendant and his witnesses."

In the circumstances of this particular case, having regard to the language used by the learned trial judge, I consider that an appellate court is entitled to form its own conclusions as to the facts of the case.

One matter which the learned trial judge has not dealt with in detail is the document which was signed by the plaintiff when he withdrew from the partnership. The contents of this document, as translated, are as follows:—

> "I, Leong Wah Fong on this day withdrawn all the shares in my name from Winsons & Co. and transfer Winsons & Co. to both Low Tuck Cheng and Ho Kuan Kai (for them) to carry on trading in the name of Winsons & Co. I also declare that from henceforth I shall have no right to recover the shop premises of Winsons & Co. Henceforth any loss or profit of Winsons

& Co. shall not concern me. This is made as proof."

In my opinion the words "I also declare that from henceforth I shall have no right to recover the shop premises of Winsons & Co." are of great significance. It seems to me that they strongly support the defendant's case that Winsons & Company took over from the plaintiff the tenancy of the whole of the ground floor of the premises.

Another matter to which the learned trial judge does not appear to have given sufficient weight is the fact that certain payments by the plaintiff of the rental of $10 per mensem to Winsons & Company were recorded in the books which were admitted in evidence as exhibits D5 and D6. The learned trial judge stated that in his opinion these two books represented the real working books of account of the firm. In my opinion the fact that the payments of $10 were recorded in these books also goes to support the defendant's case.

Finally, it is to be observed that the plaintiff while giving evidence said, "Subsequently I did pay $10 a month to Lim Kay Poh." Now the rent which the plaintiff alleged that he was paying to Lim Kay Poh was $50 per mensem which was later increased to $58.50 per mensem. If these were the amounts which he was paying for the rent of the premises there was no need to particularise the payments of $10. In my opinion this is another matter which goes to support the defendant's case.

In view of the foregoing, I have reached the conclusion that the learned trial judge should have given judgment for the defendant. The appeal is allowed and the judgment of the court below set aside.

Thomson L.P. : I have had the benefit of reading the judgment of Tan Ah Tah, F.J., in this case with which I entirely agree.

Chua J.: I have had the opportunity of reading the judgment which Tan Ah Tah F.J. has written. I concur with his judgment and have nothing to add.

Appeal allowed.

Solicitors: *Osborne-Jones & Redrup; L. A. J. Smith.*

YUSOFF v. CENTRAL ELECTRICITY BOARD

[O.C.J. (Ismail Khan J.) August 15, 1964]

[Malacca — Civil Suit No. 60 of 1960]

Electricity Ordinance, 1949, s. 67 — Electricity Regulations, 1951, regs. 14(1), (2)(a), 16(10), 22(1) & 42 — Breach of statutory duty — Whether recovery barred by provision for criminal sanction.

Negligence — Electrical installation — Death arising from tampering with electrical installation — Whether defendants negligent.

Civil Law Ordinance, 1956, ss. 7 & 8.

The plaintiff, sued the defendant on behalf of the estate of his son who died from electrocution as a result of coming into contract with a defect in the installation erected by the defendants for the supply of electricity to the plaintiff's house. The plaintiff claimed damages under sections 7 and 8 of the Civil Law Ordinance, 1956, and rested his claim on two alternative courses of action, i.e. (a) breach of statutory duty as provided in section 67 of the Electricity Ordinance and/or (b) negligence at common law. The defendants denied that they were in breach of statutory duty or guilty of negligence. They contended that the deceased caused and/or contributed to his death by his own negligence and failure to take care of his own safety. In the alternative, they alleged that the deceased knew or ought to have known that tampering with the electrical installation involved a risk of injury and that the deceased in acting as he did consented to running the said risk.

Held: (1) there was no evidence of any breach of section 67(1) of the Electricity Ordinance or the regulations made thereunder;

(2) there was no evidence of any negligence on the part of the defendants at common law;

(3) the cause of the accident in the sense of the operative act and effective cause was solely due to the deceased's own act in tampering with the defendants installation.

Observations on the main purpose of the Electricity Ordinance, 1949.

Cases referred to:—

(1) *London Passenger Transport Board* v. *Upson* [1949] A.C. 155.

(2) *Doe d. Bishop of Rochester* v. *Bridges* (1831) 1 B. & A. 847, 859.

(3) *Solomons* v. *Gertzenstein Ltd. & Ors.* [1954] 2 Q.B. 243.

(4) *Couch* v. *Steel* 3 E. & B. 402.

(5) *Britton* v. *Great Western Cotton Co.* (1872) L.R. 7 Ex. 130.

(6) *Groves* v. *Wimborne (Lord)* [1898] 2 Q.B. 402.

(7) *Britannic Merthyr Coal Co. Ltd.* v. *David* [1910] A.C. 74.

(8) *Dawson & Co.* v. *Bingley U.D.C.* [1911] 2 K.B. 149.

(9) *Black* v. *Fife Coal Co. Ltd.* [1912] A.C. 149.

(10) *Read* v. *Croydon Corporation* [1938] 4 All E.R. 631.

(11) *Lavender* v. *Diamints Ltd.* [1949] 1 K.B. 585.

(12) *Atkinson* v. *Newcastle & Gateshead Waterworks Co.* (1877) 2 Ex. D. 441.

(13) *Johnston* v. *Consumers' Gas Co. of Toronto* [1898] A.C. 447.

(14) *Phillips* v. *Britannia Hygienic Laundry Co. Ltd.* [1923] 2 K.B. 832.

(15) *Square* v. *Model Farm Diaries (Bournemounth) Ltd.* [1939] 2 K.B. 365.

(16) *Badham* v. *Lambs Ltd.* [1946] K.B. 45.

(17) *Clarke* v. *Brims* [1947] K.B. 497.

(18) *Cutler* v. *Wandworth Stadium Ltd.* [1949] A.C. 398.

(19) *Monk* v. *Warbey* [1935] 1 K.B. 75.

(20) *Marshall* v. *Gotham Co. Ltd.* [1954] A.C. 360.

(21) *Admiralty Commissioners* v. *S.S. Volute* [1922] 1 A.C. 129.